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June 20, 1991

Mr. Hugh P. Ennis, Superintendent
Department of Liquor Licenses & Control
800 West Washington, 5th Floor
Phoenix, Arizona 85007

Re: I91-024 (R91-027)

Dear Mr. Ennis:

You have asked whether the game known as "shake-a-shift" constitutes "unlawful gambling," which, pursuant to A.R.S. §§ 4-210(A) and 4-244(27), would allow the Department of Liquor Licenses and Control to revoke, suspend, or refuse a license to a liquor licensee who knowingly allows the game to be played at his establishment. We conclude that "shake-a-shift" does constitute "unlawful gambling."

A.R.S. § 4-210(A) sets forth the grounds upon which the Department may revoke, suspend, or refuse to renew a liquor license. That statute provides in pertinent part:

A. The board or the superintendent may suspend, revoke or refuse to renew any license issued pursuant to this chapter for any of the following reasons:

* * *

9. The licensee or controlling person violates or fails to comply with this title, any rule issued pursuant to this title or any liquor law of this state or any other state.

The unlawful acts for which the board may suspend, revoke, or refuse to renew a license are set forth in A.R.S. § 4-244, which contains the following provision:

It is unlawful:

* * *

27. For a licensee or employee to knowingly permit unlawful gambling on the premises.

As you noted in your letter, "shake-a-shift" is a game of chance in which a patron of an establishment is allowed to purchase one roll of the dice entitling him to receive all or a portion of the money in a jar kept at the establishment if a particular result is achieved, normally all five dice coming up six. Should the patron fail to achieve the required result, this patron's purchase money is placed in the jar and becomes a part of the potential winnings. The "shift" portion of the game provides that a patron may purchase only one roll of the dice per "working shift" of the establishment's employees, normally the shift of the bartender.

The game "shake-a-shift" constitutes gambling. "Gambling" is defined in A.R.S. § 13-3301(3) as follows:

"Gambling" means an act of risking or giving something of value for the opportunity to obtain a benefit from a game or contest of chance or skill or a future contingent event but does not include bona fide business transactions which are valid under the law of contracts including contracts for the purchase or sale at a future date of securities or commodities, contracts of indemnity or guarantee and life, health or accident insurance.

Applying this definition, "shake-a-shift" clearly constitutes gambling under Arizona law because the player risks something of value (cash) for the opportunity to obtain a benefit (all the cash in the jar) from a game of chance (throwing dice). The Arizona legislature has directed that the prohibition against gambling "be liberally construed to effectuate its penal and remedial purposes." Laws 1987 (1st Reg. Sess.) Ch. 71, § 1.

In Arizona, gambling is unlawful unless it falls within a statutory exception to the general prohibition against gambling. The exceptions set forth in A.R.S. § 13-3302 exempt from prosecution amusement gambling, social gambling, and regulated gambling. Unless it falls within one of these exceptions, the game "shake-a-shift" constitutes unlawful gambling.

Amusement Gambling: The exemption for "amusement gambling" applies only if the sole benefit received by a player is an "immediate and unrecorded right to replay which is not exchangeable for value." A.R.S. § 13-3301(1)(d)(i). Because a "shake-a-shift" player receives a financial benefit if he wins, "shake-a-shift" does not qualify for exclusion under the amusement gambling exemption.

Regulated Gambling: The exclusion for "regulated gambling" requires that the gambling be "operated and controlled in accordance with a statute, rule, or order of this state or of the United States." A.R.S. § 13-3301(5)(b). Because no statute, rule, or order controls the operation of "shake-a-shift" games, this exclusion is also inapplicable.

Social Gambling: "Social gambling" is defined as:

6. . . . gambling which is not conducted as a business and involves players who compete on equal terms with each other in a gamble if all of the following apply:

(a) No player receives, or becomes entitled to receive, any benefit, directly or indirectly, other than his winnings from the gamble.

(b) No other person receives, or becomes entitled to receive, any benefit, directly or indirectly, from the gambling activity including without limitation, benefits of proprietorship, management or unequal advantage or odds in a series of gambles.

(c) None of the players are below the age of majority.

(d) Players "compete on equal terms with each other in a gamble" when no player enjoys an advantage over any other player in the gamble under the conditions or rules of the game or contest.

A.R.S. § 13-3301(6).

Although "shake-a-shift" meets many of the criteria for social gambling, it does not meet the criterion that "No other person receives, or becomes entitled to receive any benefit, directly or indirectly, from the gambling activity" The term "benefit" is defined as "anything of value or advantage, present or prospective." A.R.S. § 13-105(2). Even though the proprietor apparently does not receive any percentage or portion of the money patrons place in the jar, he clearly receives benefits from having the gambling activity take place in his establishment. Patrons not only have the incentive to frequent the establishment to eat, drink, or socialize, they have the added incentive to frequent the establishment in order to gamble on a throw of "shake-a-shift" in the hopes of winning the jar of money kept at the establishment. Further, because patrons may play "shake-a-shift" only one time during a bartender's normal shift, they will also have the incentive to visit the

establishment more frequently or to stay for extended periods of time, and thus spend more money at the establishment. Clearly, a proprietor obtains at least an indirect benefit from the gambling activity in question. Thus, he violates A.R.S. § 4-244(27) by knowingly allowing it on his premises.¹

In conclusion, we find that the game "shake-a-shift" constitutes unlawful gambling under Arizona law, and that it does not fall within the statutory exceptions for amusement gambling, regulated gambling, or social gambling. Thus, the Department of Liquor Licenses and Control has authority, pursuant to A.R.S. §§ 4-210(A) and 4-244(27), to revoke, suspend, or refuse a license to a liquor licensee who knowingly allows the game "shake-a-shift" to be played at his establishment.

1. The findings and purpose the legislature articulated when it amended the gambling statutes in 1990 demonstrate the legislature's intent to make gambling activity such as "shake-a-shift" illegal:

A. The legislature finds that since the enactment of §§ 13-3301 through 13-3304, Arizona Revised Statutes, by Laws 1987, chapter 71, § 4, certain commercial establishments in this state have engaged in gambling that they are commonly promoting as "social gambling." Although "social gambling" is permitted by § 13-3302, Arizona Revised Statutes, the gambling that these commercial establishments are promoting does not fit within the statutory definition of "social gambling" declared by the legislature in § 13-3301, Arizona Revised Statutes. Therefore, such gambling is contrary to this state's public policy and is being conducted illegally.

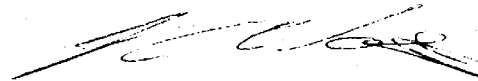
B. Since the courts of this state have not consistently ruled that existing law prohibits the gambling activity that is being promoted as "social gambling," it is the purpose of this act to reassert and reaffirm for the courts and the public the legislature's original intent that such gambling is unlawful. In reasserting and reaffirming this original intent and in clarifying with this legislation certain provisions of § 13-3301, Arizona Revised Statutes [So in original. Should read "Statutes".], enacted originally by chapter 71, Laws 1987, the legislature has been guided by the advice and counsel of the department of law.

Mr. Hugh P. Ennis, Director
June 20, 1991
Page 5
191-024

C. Section 1 of this act does not change the effect of this state's gambling laws, nor does it change the original intent of the legislature. It merely constitutes a clarification of existing law and a reaffirmation of the legislature's original act. See State v. Sweet, 143 Ariz. 266, 269, 693 P.2d 921, 924 (1985).

Laws 1990, Ch. 173, § 2, effective May 3, 1990, Historical and Statutory Notes.

Sincerely,



Grant Woods
Attorney General

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